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Business Associate Contract

Practitioner and Facility Development Tips

Business Associates are expected to adhere to the same standards as the covered entity as to protected health information. Business Associates include people or entities performing a function for or assisting a covered entity involving the use or disclosure of protected health information. Business Associate Contracts are not required for practitioners or facilities in treatment of a patient. ***This document provides practitioners and facilities with best practice guidelines for developing an organization specific Business Associate Contract.***

Best Practices - Development Guidelines:

Under HIPAA, the Department of Health and Human Services has no direct jurisdiction over business associates. Covered entities are expected to ensure continued privacy protections of health information by entering into Business Associate Contracts. As part of the Business Associate Contract, Covered Entities are required to investigate when complaints are received or other information containing substantial and credible evidence of violations by a business associate. ***A covered entity that becomes aware of a material breach by a business associate is required to take reasonable steps to correct the breach or terminate the contract with the business associate.***

The following guidelines are applicable to all providers that utilize business associates in the area of health care information:

- ***Business Associate agrees that it shall be prohibited from using or disclosing the information provided or made available by Covered Entity*** for any purpose other than as expressly permitted or required by this Contract.
- ***Specify purposes for which the Business Associate may use or disclose the Information.*** These uses and disclosures must be within the scope of the Business Associate's services provided to the Covered Entity such as: claims processing or administration, data analysis, utilization review, quality assurance, billing, benefit management, practice management, and repricing; legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services.
- ***Business Associate is permitted to use or disclose information if necessary for management and administration or to carry out legal responsibilities provided:*** The Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and agrees that the information provided or made available by Covered Entity shall not be further used or disclosed other than as permitted or required by the Contract or as required by law.
- ***Appropriate Safeguards:*** Business Associate will establish and maintain reasonable safeguards to prevent any use or disclosure of the information, other than as specified in this Contract.
- ***Subcontractors and Agents:*** Business Associate agrees that anytime information is provided or made available to any subcontractors or agents, Business Associate must enter

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into a subcontract which contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract.

- ***Right of Access to Information:*** Business Associate agrees to make available and provide a right of access to information by the individual for whom the information was created and disclosed.
- ***Provide Accounting:*** Business Associate agrees to make information available as required to provide an accounting of disclosures.
- ***Access to Books and Records:*** Business Associate agrees to make its internal practices, books, and records relating to the use or disclosure of information received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary of HHS for purposes of determining compliance with the HHS Privacy Regulations.
- ***Return or Destruction of Information:*** At termination of this Contract, Business Associate agrees to return or destroy all information received from, or created by the Covered Entity.
- ***Mitigation Procedures:*** Business Associate will have procedures in place for mitigating any harmful effects from the use or disclosure of information in a manner contrary to this Contract or the HHS Privacy Regulations.
- ***Sanction Procedures:*** Business Associate must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Contract or the HHS Privacy Regulations.
- ***Property Rights:*** The information shall be and remain the property of Covered Entity. Business Associate agrees that it acquires no title or rights to the information, including any de-identified information, as a result of this Contract.
- ***Termination of Contract:*** Business Associate agrees that Covered Entity has the right to immediately terminate this Contract if Covered Entity determines that Business Associate has violated a material term of this Contract.

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Sample Business Associate Contract Form:

This form is provided without any warranty, express or implied, as to its legal effect and completeness. Use of this form is entirely at your own risk.

THIS CONTRACT:

Is entered into on this _____ day of _____, 2001, between Provider/Plan/Clearinghouse and Vendor/Person(s).

WITNESSETH:

WHEREAS, COVERED ENTITY will make available and/or transfer to BUSINESS ASSOCIATE certain information, in conjunction with goods or services that are being provided by BUSINESS ASSOCIATE to COVERED ENTITY, that is confidential and must be afforded special treatment and protection. WHEREAS, BUSINESS ASSOCIATE will have access to and/or receive from COVERED ENTITY certain information that can be used or disclosed only in accordance with this Contract and the HHS Privacy Regulations.

NOW, THEREFORE, COVERED ENTITY and BUSINESS ASSOCIATE:

Agree as follows: Limits On Use And Disclosure Established By Terms Of Contract. BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by COVERED ENTITY for any purpose other than as expressly permitted or required by this Contract.

The term of this Contract shall commence as of _____ (the Effective Date), and shall expire when all of the Information provided by COVERED ENTITY to BUSINESS ASSOCIATE is destroyed or returned to COVERED ENTITY.

THE PARTIES:

Hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from COVERED ENTITY for the following stated purposes: Include a general statement describing the stated purposes that BUSINESS ASSOCIATE may use or disclose the Information. These uses and disclosures must be within the scope of the BUSINESS ASSOCIATE'S representation of the COVERED ENTITY.

Additional Purposes For Which BUSINESS ASSOCIATE May Use Or Disclose Information. In addition to the Stated Purposes for which BUSINESS ASSOCIATE may use or disclose Information provided or made available from COVERED ENTITY for the following additional purpose(s):

1. Use of Information For Management, Administration and Legal Responsibilities. BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE.
2. Disclosure of Information For Management, Administration and Legal Responsibilities. BUSINESS ASSOCIATE is permitted to disclose Information received from COVERED ENTITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided the disclosure is required by law; or the BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person

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immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached.

3. Data Aggregation Services. BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of COVERED ENTITY. Data Aggregation Services. BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of COVERED ENTITY.
4. BUSINESS ASSOCIATE hereby agrees that the information provided or made available by COVERED ENTITY shall not be further used or disclosed other than as permitted or required by the Contract.
5. Appropriate Safeguards. BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Contract.

REPORTS OF IMPROPER USE OR DISCLOSURE:

BUSINESS ASSOCIATE hereby agrees that it shall report to COVERED ENTITY within two (2) days of discovery any use or disclosure of Information not provided for or allowed by this Contract.

SUBCONTRACTORS AND AGENTS:

BUSINESS ASSOCIATE hereby agrees that anytime Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Contract.

RIGHT OF ACCESS TO INFORMATION:

BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements including substitution of the words Covered Entity with BUSINESS ASSOCIATE where appropriate.

AMENDMENT AND INCORPORATION OF AMENDMENTS:

BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.526, including substitution of the words Covered Entity with BUSINESS ASSOCIATE where appropriate.

PROVIDE ACCOUNTING:

BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words Covered Entity with BUSINESS ASSOCIATE where appropriate.

ACCESS TO BOOKS AND RECORDS:

BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the COVERED ENTITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations.

RETURN OR DESTRUCTION OF INFORMATION:

At termination of this Contract, BUSINESS ASSOCIATE hereby agrees to return or destroy all Information received from, or created or received by BUSINESS ASSOCIATE on behalf of COVERED

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ENTITY. BUSINESS ASSOCIATE agrees not to retain any copies of the Information after termination of this Contract. If return or destruction of the Information is not feasible, BUSINESS ASSOCIATE agrees to extend the protections of this Contract for as long as necessary to protect the Information and to limit any further use or disclosure. If BUSINESS ASSOCIATE elects to destroy the Information, it shall certify to COVERED ENTITY that the Information has been destroyed.

MITIGATION PROCEDURES:

BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Contract or the HHS Privacy Regulations.

SANCTION PROCEDURES: BUSINESS ASSOCIATE agrees and understands that it must develop and implement a systems of sanctions for any employee, subcontractor or agent who violates this Agreement or the HHS Privacy Regulations.

PROPERTY RIGHTS:

The Information shall be and remain the property of COVERED ENTITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified information, as a result of this Contract.

TERMINATION OF CONTRACT:

BUSINESS ASSOCIATE agrees that COVERED ENTITY has the right to immediately terminate this Contract and seek relief under the Disputes Article if COVERED ENTITY determines that BUSINESS ASSOCIATE has violated a material term of this Contract.

GROUND FOR BREACH:

Any non-compliance by BUSINESS ASSOCIATE with this Contract or the HHS Privacy Regulations will automatically be considered to be a Grounds For Breach, if BUSINESS ASSOCIATE knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

Choice OF LAW:

The law of the State of _____ shall govern this Contract. [The Parties also agree that for purposes of privacy rights, the HHS Privacy Regulations shall supersede all applicable state laws.

DISPUTES:

Any controversy or claim arising out of or relating to the Contract will be finally settled by compulsory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except for injunctive relief as described below in article [or in court of competent jurisdiction].

INJUNCTIVE RELIEF:

Notwithstanding any rights or remedies provided for in this Contract, COVERED ENTITY retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of information by BUSINESS ASSOCIATE or any agent, contractor or third party that received information from BUSINESS ASSOCIATE.

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MISCELLANEOUS:

Binding Nature and Assignment. This Contract shall be binding on the Parties hereto and their successors and assigns, but neither Party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

NOTICES:

Whenever under this Contract one party is required to give notice to the other, such notice shall be deemed given if mailed by First Class United States mail, postage prepaid, and addressed as follows:

COVERED ENTITY:

[Name/Address] Either Party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

BUSINESS ASSOCIATE:

[Name/Address] Either Party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

GOOD FAITH:

The Parties agree to exercise good faith in the performance of this Contract.

FORCE MAJEURE:

BUSINESS ASSOCIATE shall be excused from performance under this Contract for any period BUSINESS ASSOCIATE is prevented from performing any services pursuant hereto, in whole or in part, as a result of an Act of God, war, civil disturbance, court order, labor dispute or other cause beyond its reasonable control, and such nonperformance shall not be grounds for termination.

ATTORNEY'S FEES:

Except as otherwise specified in this Contract, if any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, misrepresentation, or injunctive action, in connection with any of the provisions of this Contract, each party shall bear their own legal expenses and the other cost incurred in that action or proceeding.

ENTIRE AGREEMENT:

This Contract consists of this document, and constitutes the entire agreement between the Parties. There are no understandings or agreements relating to this Agreement which are not fully expressed in this Contract and no change, waiver or discharge of obligations arising under this Contract shall be valid unless in writing and executed by the Party against whom such change, waiver or discharge is sought to be enforced.

IN WITNESS WHEREOF:

BUSINESS ASSOCIATE and COVERED ENTITY have caused this Contract to be signed and delivered by their duly authorized representatives, as of the date set forth above.
BUSINESS ASSOCIATE COVERED ENTITY

By:_____

By:_____

Print Name:_____

Print Name:_____

Title:_____

Title:_____